

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF  
ALABAMA NORTHERN DIVISION

WELLINGTON SPECIALTY  
INSURANCE COMPANY,

PLAINTIFF,

V.

CASE NO. \_\_2:08CV115-WKW

DE ENTERPRISES, LLC; J. MICHAEL  
SHEFFIELD; CASCADES DEVELOPMENT  
GROUP LLC,

DEFENDANTS.

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DEFENDANT DE ENTERPRISES LLC, AND  
CASCADES DEVELOPMENT GROUP LLC, ANSWER  
AND DE ENTERPRISES LLC COUNTERCLAIM

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COMES NOW Defendants DE Enterprises LLC, and Cascades Development Group LLC, by and through their attorney of record, and files this Answer to Wellington's Complaint as follows:

1. Defendants admit to the allegations set forth in paragraph 1 of Wellington's complaint.
2. Defendant DE admits to the allegations set forth in paragraph 2 of Wellington's complaint.
3. Defendants admit to the allegations set forth in paragraph 3 of Wellington's complaint.
4. Defendant Cascades admits to the allegations set forth in paragraph 4 of Wellington's complaint.
5. Defendants admit to the allegations set forth in paragraph 5 of Wellington's complaint.
6. Defendants admit to the allegations set forth in paragraph 6 of Wellington's complaint.

7. Defendants admit to the allegations set forth in paragraph 7 of Wellington's complaint.

8. Defendants admit to the allegations set forth in paragraph 8 of Wellington's complaint.

9. Defendants admit to the allegations set forth in paragraph 9 of Wellington's complaint.

10. Defendants admit to the allegations set forth in paragraph 10 of Wellington's complaint.

11. Defendants admit to the allegations set forth in paragraph 11 of Wellington's complaint.

12. Defendants admit to the allegations set forth in paragraph 12 of Wellington's complaint.

13. Defendants deny the allegations set forth in paragraph 13 of Wellington's complaint and demand strict proof thereof.

14. Defendants admit to the allegations set forth in paragraph 14 of Wellington's complaint.

#### AFFIRMATIVE DEFENSES

15. Defendants say not guilty.

16. Defendants affirmatively plead waiver and estoppel.

17. These Defendants plead the general issue.

18. The Defendants further aver the Plaintiff has filed a motion for permissive intervention for the limited purpose of determining existence of insurance coverage in the underlying lawsuit and thus their remedy to establish coverage is protected and the Circuit Court of Montgomery County has jurisdiction to adjudicate any claims raised by the Plaintiff herein.

19. Defendants reserve the right to submit any other affirmative defenses.

DE ENTERPRISES COUNTERCLAIM

1. The Counterclaim Plaintiff, DE Enterprises, LLC does business in the State of Alabama. DE Enterprises is an Alabama limited liability company with its principal place of business in Alabama. It is a defendant in an underlying state court case currently pending in the Circuit Court of Montgomery County, Alabama.
2. The Counterclaim Defendant, Wellington Specialty Insurance Company (Wellington) is a surplus lines insurance company incorporated and organized under the laws of the State of Delaware, having its principal place of business in the State of Arizona.
3. The Counterclaim Defendant, J. Michael Sheffield is an individual residing in Georgia. Mr. Sheffield is the plaintiff in the Montgomery County case.
4. Based on the Plaintiff's claims for damages in the underlying case and the cost of defending DE Enterprises in that case, the amount in controversy, exclusive of interest and costs exceeds the sum of \$75,000.00. As such, jurisdiction is predicated on diversity of citizenship and the amount in controversy, 28 U.S.C. §1332 AND 28 U.S.C. §1446 as amended, and on the Federal Declaratory Judgment Act, 29 U.S.C. §2201.
5. Wellington issued policy number 0100300015 covering DE Enterprises for a period of June 26, 2005 through June 26, 2006. Provisions of said policy will be set forth below.
6. The underlying lawsuit, styled *J. Michael Sheffield -v- Cascades Development Group, LLC et. al.* Case No. CV 2006-1158 is pending in the Circuit Court of Montgomery County, Alabama. In said lawsuit, the plaintiff has alleged a bodily injury as a result of the negligent conduct of the insured, DE Enterprises.
7. The policy issued by Wellington provides the following:  
*SECTION I--COVERAGES*  
*COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY*
  1. *Insuring Agreement*
    - a. *We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury"....*
  2. *Exclusion*

*This insurance does not apply to:*

    - b. ***Contractual Liability***

*"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:*

*(1) That the insured would have in the absence of the contract or agreement; or*

[Emphasis added]

8. The Counterclaim Plaintiff avers the language of the policy specifically includes liability for the claims made by the underlying plaintiff; notwithstanding the allegations made by Wellington that the underlying plaintiff's claims arise out of a contractual agreement or relationship with the insured, DE Enterprises.

9. The Counterclaim Plaintiff avers the language of the policy includes coverage, as well as a defense, for the allegations of negligence and bodily injury as alleged in the underlying plaintiff's claims against the insured, DE Enterprises.

WHEREFORE, Counter Plaintiff DE Enterprises request this Honorable Court to grant the following relief.

A. To declare that Wellington has a duty to defend DE Enterprises in the underlying case;

B. To declare that Wellington has a duty to indemnify DE Enterprises in the underlying case;

C. To grant DE Enterprises a reasonable attorney fee for the defense and prosecution of this cause; and

D. For such other, further or different relief as the court may determine proper under the facts and circumstances of this cause.

This 7<sup>th</sup> day March 2008.

S/  
Mark Allen Treadwell (TRE005)  
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Attorney for Defendant/Counterclaimant

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing upon the following via US District Court CMECF United States Postal Service, postage prepaid and properly addressed to:

Hon. Mark Hogewood  
Wallace, Jordan, Ratliff & Brandt, LLC  
P.O. Box 530910  
Birmingham, Alabama 35253

Hon. Michael Harper  
P.O. Box 780608  
Tallasse, Alabama 36078

Hon. Thomas Coleman  
Hon. Thomas S. Spires  
SMITH, SPIRES & PEDDY PC  
2015 2<sup>nd</sup> Avenue North - Suite 200  
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S/  
Mark Allen Treadwell (TRE005)